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EDWIN WONG LEE TUCK v. PP & ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD SHARIFF ABU SAMAH JC
[CRIMINAL APPEALS NO: 42(S)-145-12-2012 & 42(S)-149-12-2012]
8 SEPTEMBER 2016

B

INSURANCE: *Agents – Insurance Act 1996, s. 41(2) – Payments of additional cash incentives to agents – Whether in breach of Control Operating Cost of General Insurance Business Guidelines ('OCC Guidelines') – Whether amounted to an offence under s. 41(2) of Insurance Act – Whether non-compliance of OCC Guidelines attracted penal consequences – Purpose of payment of additional incentives – Whether to increase asset of insurance company and to remain solvent*

C

There was a scheme created by Pan Global Insurance Berhad ('PGI') to pay cash incentives to its qualified agents, namely Omniteam Sdn Bhd ('Omniteam') and M-Two Network ('M-Two') which was not properly attributable to the insurance fund which was in breach of s. 41(2) of the Insurance Act 1996 ('Act') and also the guideline to control operating costs of general insurance business ('OCC guidelines') issued by Bank Negara Malaysia to all insurance companies. The aforesaid payments were made under the pretext of promotion marketing services done for PGI. Initially, at the Sessions Court, both Edwin Wong ('appellant') the Chief Executive Officer of PGI and Bernard Wong ('respondent'), the chairman and director of PGI were jointly tried under s. 41(2) of the Act read together with s. 206(1) of the same Act. The appellant had faced 53 charges while the respondent faced 27 charges. The Sessions Court Judge convicted the appellant on all 53 charges and the appellant was sentenced to 12 months' imprisonment for each charge (sentence to run concurrently) while the respondent was acquitted and discharged on all 27 charges. The appellant appealed against the said decision ('appellant's appeal') and the Deputy Public Prosecutor ('DPP') appealed against the acquittal order on the respondent ('prosecution's appeal'). The issues that arose for the court's determination, *inter alia*, were (i) whether the breach of the OCC guidelines amounted to an offence under s. 41(2) of the Act; (ii) whether the OCC guidelines were vague, ambiguous and doubtful; (iii) whether such breach of the OCC guidelines (if any) tantamount to a breach of s. 41(2) of the Act; (iv) in the event that a breach of OCC guideline accrued, whether the appellant and the respondent should be punished according to the statute or otherwise; and (v) whether the appellant and the respondent had the intention to breach any of the provisions under the Act.

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Held (allowing appellant's appeal; dismissing prosecution's appeal):

I

(1) There was nothing mentioned in any of the guidelines that such non-compliance or breach of the same would amount to a breach of s. 41(2) of the Act. Despite the widespread of industry practices of

paying additional incentives in excess of the OCC guidelines, Bank Negara's position had always been that such breach and/or non-compliance of the OCC guidelines may attract the administrative consequences, in that it will be a factor to be considered by the Bank Negara in its assessment of the eligibility of board members and the Chief Executive Officers for re-appointment. (para 10)

(2) When an Act of Parliament or legislation, be it primary or secondary, was relied upon by the prosecution to attach criminality on an individual, it must be interpreted and construed strictly. This is in accordance with the fundamental principles that only Parliament, and not judges, can create offences and any such criminal provisions must be clear and unambiguous so that offences are certain and definite. Otherwise, it will result in an individual suffering penal consequences unfairly and unjustly. There was nothing in the Act to render the non-compliance of a Bank Negara Malaysia's guidelines, be it the OCC guidelines or otherwise, be a criminal offence. (paras 13 & 15)

(3) It was vague, ambiguous and doubtful whether the breach of the OCC guidelines would tantamount to a breach of s. 41(2) of the Act. This was especially so when the payments were made to agents of the insurance company who had brought in business and gross written premium, which contributed to the assets of the insurance fund. As such, both the appellant and respondent could not be held to be criminally responsible for a conduct, which they could not reasonably apprehend to be an offence. This was especially so when they were compelled by s. 41(1) of the Act to ensure that there were sufficient assets in the insurance funds to meet its liabilities or claims. In view of such ambiguity and vagueness, whether the OCC guidelines would tantamount to a breach of s. 41(2) of the Act, such ambiguity should be interpreted in favour of the appellant and the respondent. (paras 15 & 16)

(4) Even if it was true that the appellant and the respondent had not complied of the OCC guidelines, the recourse opened to Bank Negara Malaysia was that it could have taken administrative actions. To impose punishment as in the case of the appellant for imprisonment of 12 months on all the 53 charges (sentence to run concurrently) would run foul of the provisions of the law. (para 19)

(5) The appellant was bound to comply with s. 41(1) of the Act and to make sure that the insurance fund of the company had sufficient assets. The appellant had no choice but to engage the agents to safe the insurance company from being insolvent and from breaching s. 41(1) of the Act. The appellant's intention in paying additional incentives was nonetheless for the purpose of increasing the asset of the insurance company and to remain solvent. (para 22)

(6) There was no action which tantamount to any misuse of the funds for the benefit of the appellant whether directly or indirectly as he was merely fulfilling his obligation to ensure that PGI was solvent and to be able to meet future possible claims by the insurer. The appellant had made efforts in ensuring that the insurance fund of the company had sufficient assets. (para 24)

(7) The respondent was very clear in his evidence that the agents' listings and their production summaries were never sent to him. As such, the respondent never knew that in fact these payments were actually meant for cash incentives. The respondent and the board of directors only knew of the existence of the scheme when the board was briefed by the appellant where he tabled his report on the investigation into the scheme and Omniteam and M-Two Network. The respondent had given statement under s. 107 of the Act when the matter was investigated. It was an exculpatory statement. The contents of the statement clearly showed that the respondent never consented or connived to the scheme and had shown diligence in its prevention of the commission of the offence. The statement represents a *bona fide* defence and the contents of the statements were consistent with the respondent's evidence in court. (para 35)

Case(s) referred to:

Affin Bank Bhd v. Datuk Ahmad Zahid Hamidi [2005] 1 CLJ 521 HC ***(refd)***
Choo Chang Teik & Anor v. PP [1991] 3 CLJ 2387; [1991] 1 CLJ (Rep) 54 SC ***(refd)***
Diana Chee Vun Hsai v. Citi Bank Bhd [2009] 6 CLJ 774 HC ***(refd)***
Ghasem Gharezadehsharbiani Hassan v. PP [2014] 1 LNS 752 CA ***(refd)***
Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC ***(refd)***
Krishnan Ramar v. PP [1987] 1 CLJ 28; [1987] CLJ (Rep) 145 SC ***(refd)***
Mah Hong Ching & Anor v. PP [2007] 2 CLJ 292 CA ***(refd)***
MCIS Insurance Bhd v. Associated Cover Sdn Bhd [2001] 1 LNS 322 HC ***(refd)***
PP v. Ini Abong & Ors [2009] 1 CLJ 526 HC ***(refd)***
PP v. Mohamed Noor Jantan [1979] 1 LNS 77 FC ***(refd)***
PP lwn. Muhammad Nasriq Abdullah [2015] 1 LNS 393 HC ***(refd)***
PP v. Saimin & Ors [1971] 1 LNS 115 HC ***(refd)***
Shukri Mohamad v. PP [1995] 3 CLJ 799 SC ***(refd)***
Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang [1996] 3 CLJ 335 CA ***(refd)***
Tan Kiam Peng v. PP (2008) 1 SLR 1 ***(refd)***
Thong Foo Ching & Ors v. Shigenori Ono [1998] 4 CLJ 674 CA ***(refd)***

Legislation referred to:

Banking and Financial Institutions Act 1989, s. 126
Federal Constitution, art. 5
Insurance Act 1996, ss. 41(1), (2), 107(2)(b), 201, 202, 203(1)(b), 206(1)
Insurance Regulations 1996, reg. 41(1)
Payment Systems Act 2003, s. 70

Other source(s) referred to:
MP Jain, *Administrative Law of Malaysia and Singapore*, 3rd edn, p 82

(Criminal Appeal No: 42(S)-145-12-2012)
For the appellant - Sulaiman Abdullah, Alan Wong Teck Wei & Alex Lim Chew Liang; M/s Zain, Megat & Murad
For the respondent - Muhamad Ilhami Ahmad; DPP

(Criminal Appeal No: 42(S)-149-12-2012)
For the appellant - Muhamad Ilhami Ahmad; DPP
For the respondent - Kitson Foong; M/s Kit & Assocs

Reported by Sandra Gabriel

JUDGMENT

Mohamad Shariff Abu Samah JC:

Background

[1] Initially, at the Sessions Court, Kuala Lumpur both Edwin Wong (later known as the appellant) being the Chief Executive Officer of Pan Global Insurance (PGI) and Bernard Wong (later known as the respondent), as Chairman and Director of Pan Global Insurance (PGI) were jointly tried under s. 41(2) of the Insurance Act 1996 read together with s. 206(1) of the same Act. The appellant faced 53 charges while the respondent faced 27 charges.

[2] Both the appellant and the respondent were called to enter their defence on all charges. Both of them testified under oath from the witness box and also called five other witnesses in their defence.

[3] At the end of defence, the learned Sessions Court Judge convicted the appellant on all 53 charges and was sentenced to 12 months for each charge (sentence to run concurrently) while the respondent was acquitted and discharged on all 27 charges. In view of these, the appellant had appealed against the said decision and the learned Deputy Public Prosecutor had appealed against the acquittal order on the respondent. Before I proceed to decide on this matter, lets look at the charges that were preferred against the appellant and the respondent. The charges are as follows:

> 53 Charges on Edwin Wong Lee Tuck (Appellant):
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> Pertuduhan (1)
>
> Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Julai 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM67,322-54 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran

bernombor 00031181 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (2)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 22 Ogos 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM39,072-04 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00033925 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (3)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 17 September 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM37,610-69 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00035656 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (4)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 17 September 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM36,050-55 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00035658 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (5)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 12 November 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala

Lumpur telah menggunakan sebanyak RM33984-76 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00039488 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (6)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 12 November 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM37,291-17 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00039489 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (7)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 5 December 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM34,880-95 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00041058 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (8)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 5 December 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM36,098-34 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00041059 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (9)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Januari 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM34,646-64 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00044438 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (10)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Januari 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM29,011-28 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00044439 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (11)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Januari 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM31,525-33 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00046247 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (12)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Februari 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM32,696-06 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi

tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00046248 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (13)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 16 Februari 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM18,895-22 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00046249 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (14)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 22 Ogos 2003 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM39,072-04 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00033925 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (15)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 March 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM33,318-99 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00049632 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (16)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 March 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur

telah menggunakan sebanyak RM25,258-64 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00049633 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (17)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 April 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM25,819-87 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00052360 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (18)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 April 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM27,716-18 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00052361 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (19)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 10 June 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak R26,290-29 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00055655 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (20)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 10 June 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM32,168-22 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00055656 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (21)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Julai 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM24,713-99 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00058233 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (22)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Julai 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50777 Kuala Lumpur telah menggunakan sebanyak RM21,604-40 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00058236 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (23)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 29 Julai 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM29,031-11 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi

tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00061277 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (24)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 29 Julai 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50787 Kuala Lumpur telah menggunakan sebanyak RM24,600-75 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00061278 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (25)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 20 Ogos 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM47,375-48 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00063385 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (26)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 Ogos 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM63,076-43 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00063384 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (27)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 19 Oktober 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM63,371-63 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00067685 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (28)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 2 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM41,638-60 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00070051 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (29)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 29 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM71,179-42 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00071442 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (30)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM38,298-76 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran

bernombor 00071443 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (31)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 14 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM54,400-66 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00075911 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (32)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 28 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM81,643-29 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00077173 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (33)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 14 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM69,270-33 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00075912 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (34)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur

telah menggunakan sebanyak RM71,657-89 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081738 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (35)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 28 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM39,622-40 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00077174 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (36)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM36,943-84 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081735 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (37)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM28,209-17 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081736 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (38)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM61,321-97 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081737 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (39)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 2 Jun 2005 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM99,818-38 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00088979 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (40)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Ogos 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM87,634-31 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00095423 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (41)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Ogos 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM53,502-19 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran

bernombor 00095422 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (42)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM57,668-86 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00098565 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (43)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM100,012-76 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00098567 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (44)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 20 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM103,581-77 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00100345 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (45)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 20 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala

Lumpur telah menggunakan sebanyak RM63,255-52 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00100344 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (46)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Januari 2006 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM44,777-79 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00112259 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (47)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Januari 2006 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM88,913-16 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00112249 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (48)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 Disember 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM75,586-64 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 0010826 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (49)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 December 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM126,970-22 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00108125 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (50)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM47,717-77 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00106144 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (51)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM98,512-02 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00106150 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (52)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM61,244-19 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa

berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00105006 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (53)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM113,378-34 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Ketua Pegawai Eksekutif institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00105004 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

27 Charges against Bernard Wong Shoon Tet (Respondent)

Pertuduhan (1)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 19 Oktober 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM63,371-63 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00067685 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (2)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 2 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM41,638-60 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00070051 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (3)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 29 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM71,179.42 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00071442 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (4)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 23 November 2004 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM38,298,76 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00071443 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (5)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 14 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM54,400.66 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00075911 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh di hukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (6)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 28 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM81,643.29 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah

meluluskan pembayaran itu melalui baucher bayaran bernombor 00077173 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (7)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 14 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM69,270.33 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00075912 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (8)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM71,657.89 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081738 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (9)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 28 Januari 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM39,622040 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00077174 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (10)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM36,943.84 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081735 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (11)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM28,209.17 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081736 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (12)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Mac 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM61,321.97 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00081737 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (13)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 28 Jun 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM99,818.32 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah

meluluskan pembayaran itu melalui baucher bayaran bernombor 00088979 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (14)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Ogos 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM87,634.31 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00095423 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (15)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 Ogos 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM53,502.19 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00095422 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (16)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM57,668.86 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00098565 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (17)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 1 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM100,012.76 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00098567 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (18)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 20 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM103,581.77 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00100345 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (19)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 20 September 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM63,255.52 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00100344 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (20)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Januari 2006 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM44,777.79 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah

meluluskan pembayaran itu melalui baucher bayaran bernombor 00112259 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (21)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 Januari 2006 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM88,913.16 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00112249 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (22)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 December 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM75,586-64 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00108126 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (23)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 December 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM126,970.22 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00108125 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (24)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM44,717.77 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00106144 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (25)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 18 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM98,512.02 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00106150 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (26)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM61,244.19 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah meluluskan pembayaran itu melalui baucher bayaran bernombor 00105006 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Pertuduhan (27)

Bahawa Pan Global Insurance Berhad (No. Pendaftaran Syarikat 9538-M) iaitu sebuah penanggung insurans berlesen, pada 8 November 2005 di tingkat 12B, Menara Pan Global, No. 8, Lorong P. Ramlee, 50778 Kuala Lumpur telah menggunakan sebanyak RM113,378.34 dari asset kumpulan wang insuransnya bagi perbelanjaan yang tidak sepatutnya berkaitan dengan kumpulan wang insurans tersebut dan bahawa kamu pada masa berlakunya kesalahan itu adalah Pengarah institusi tersebut yang telah

meluluskan pembayaran itu melalui baucher bayaran bernombor 00105004 dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 41(2) Akta Insurans 1996 (Akta 553) yang dibaca bersama Seksyen 206(1) Akta yang sama dan boleh dihukum di bawah Seksyen 41(2) Akta yang sama.

Facts Of Case For Both Appeals

[4] The facts of the case are that there was a scheme created by Pan Global Insurance Berhad (PGI) to pay cash incentives to its "qualified agents" through a third party ie, Omniteam Sdn Bhd and later M-Two Network which were not properly attributable to the insurance fund in breach of s. 41(2) of the Insurance Act 1996 and also the OCC guidelines issued by the Bank Negara Malaysia to all insurance companies. The aforesaid payments that were made to Omniteam and M-Two Network were under the pretext of promotion marketing services done for PGI.

[5] The mode of work and the running of the scheme were as follows:

(a) The branch manager of each PGI branch would submit the production figures to a staff (SP3) of PGI. The production figures mean that the amount of business that the agent brings in for PGI;

(b) SP3 would then compile everything into one spread sheet stating the name of the agent, the production figure and she would work out the amount of incentives to be paid out. At the same time she would also prepared and signed the payment voucher;

(c) After the three documents were prepared ie the payment voucher, agent listing (names of the qualified agents) and the production figure from the branch managers, SP3 would pass them to her manager SP4 to verify it. After SP4 verified the figures he would sign at the "check by" column of the payment voucher;

(d) After SP4 checked and signed the payment voucher, he would pass it back to SP3. SP3 would then call Omniteam to prepare the invoice according to the amount that was needed to pay out to the agents. When SP3 received the invoice together with the all documents, she would pass them to the finance department to get the necessary signatures. The agent listing was also attached to the payment voucher that went to the CEO and the director for approval;

(e) After the CEO and the director signed the payment voucher, it would be passed to the finance department to do the necessary. Once the PGI cheque has been prepared, it will be passed back to SP3 and she would courier it to Omniteam. Omniteam would then prepare individual cheques in the branch's manager's name according to the listing and Omniteam would courier them back to SP3;

(f) SP3 would then bank-in the cheques into the branch manager's account and the branch managers would then withdraw cash and pay to the agents; and

(g) Omniteam and later M-Two charged a service charge of RM15 to RM18 to each cheque they issued in the name of the branch manager.

In conclusion to the fact, it is the prosecution's case that the payments in the charges that were made by PGI were in breach and not in compliance with the Bank Negara "guideline to control operating cost of general insurance business" (OCC guidelines) and that the appellant as a Chief Executive Officer (CEO) and the respondent being the chairman and the director respectively, at the material time when payments were made, have committed an offence under s. 41(2) of the Insurance Act, read together with s. 206(1) of the same Act. The key and such an important exhibit to the prosecution is (P191): Breach of JPI/GPI 2: Guidelines to control operating costs of general insurance business. The exhibit was very crucial because this guideline prohibits insurers from giving additional remunerations or incentives to their agents. It states as follows:

> ... should not be rewarding their agents more than the maximum commission and agency related expenses limits allowed, including any payment in the form of introducer/ referral fees and exclusivity fees ...

The prosecution is deeming that by signing, on behalf of PGI, the 53 cheques and 27 cheques respectively that were made payable to Omniteam and M-Two Network for "cost of promotion and marketing services", both the appellant, being the Chief Executive Officer of PGI and the respondent as chairman and director of PGI had on each of these occasions, to have committed the offence, pursuant to s. 206(1) of the Insurance Act 1996.

The Charges

[6] Before this court deals with this appeal, it is best to look at the statutory provisions enshrined in the charges against both the appellant and the respondent.

(a) Section 41(2) of the Insurance Act 1996 as follows:

> Subject to Section 122, a Licensed Insurer shall apply the assets of an Insurance Funds only to meet such of its liabilities and expenses as are properly attributable to that insurance fund.

(b) The prosecution relied on the activation of the statutory presumption under s. 206(1) of the Insurance Act 1996 which reads as follows:

> Where an offence is committed by a body corporate or an association of persons, a person:
>
> (a) Who is its director, controller, officer or partner; or
>
> (b) Who is concerned in the management of its affairs,

A

> at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstance.

B

Issues For The Determination Of The Court

[7] The issues that arise in both the appeals pertaining to the appellant and the respondent can be summarised as follows:

C

(a) Whether the breach of the OCC guidelines amounts to an offence under s. 41(2) of the Insurance Act 1996;

(b) Whether the OCC guidelines are vague, ambiguous and doubtful. If so, whether such breach of the OCC guidelines (if any) tantamount to a breach of s. 41(2) of the Insurance Act 1996;

D

(c) If there were breaches of the OCC guidelines (if any) would the appellant (Edwin Wong) and the respondent (Bernard Wong) be punished according to the statute or otherwise; and

(d) Whether the appellant (Edwin Wong) and the respondent (Bernard Wong) had the intention to breach any of the provisions under the Insurance Act 1996.

E

The above issues that need to be determined by this court is whether at this point of time, this court is empowered to disturb or reverse the decision of the learned Sessions Court Judge in making and arriving at her findings. In this regard, I would want to refer to the case of *Herchun Singh & Ors v. PP* [1969] 1 LNS 52; [1969] 1 MLRA 382 it was held that:

F

> An appellate Court should be slow in disturbing such finding of fact arrived at by the Judge, who had the advantage of seeing and hearing the witness, unless there are substantial and compelling reasons for disagreeing with the finding: see *Sheo Swarup v. King Emperor* AIR [1934] PC 227.

G

The laws propounded in the above case have been repeatedly followed by several cases such as in the case of *PP lwn. Muhammad Nasriq Abdullah* [2015] 1 LNS 393; [2015] MLRHU 322, [2014] 3 MLJ 380, where the court held that:

H

> Ianya juga adalah undang-undang yang mantap bahawa mahkamah yang mendengar rayuan tidak akan mencampuri keputusan mahkamah rendah terhadap penemuan sebarang fakta kecuali penemuan fakta tersebut adalah salah (sila rujuk kepada kes: *Gobinath Reddy a/l Gopal v. Public Prosecutor* (2014) 1 MLJ 446 di mana kemudiannya diikuti dalam kes: *Reza Malek Zadeh Sahabali v. Public Prosecutor* (2012) MLRHU 1815, (2014) 3 MLJ 380 yang memutuskan sebagaimana berikut:

I

> > The present appeal is substantially factual. The learned judge has considered and evaluated the evidence before him and found that the defence has failed to raise a reasonable doubt in the

prosecution's case. We find no error that warrants appellate intervention. In any case, an appellate court should be slow in interfering with the trial judge's findings of fact. On the totality of the evidence we are of the view that there is sufficient evidence to support the findings of the learned judge that the appellant is guilty as charged.

First Issue

Whether The Breach Of The OCC Guidelines Amounts To An Offence Under s. 41(2) Of The Insurance Act 1996

[8] It is clear that before a person can be convicted of an offence especially one which attracts the penal consequences such as s. 41(2) of the Insurance Act 1996, it is best to look into and remind our selves on the right to personal liberty in art. 5 of the Federal Constitution as follows:

(1) no person shall be deprived of his life or personal liberty save in accordance with the law.

It is the prosecution's case and upon the fact that the Pan Global Insurance Berhad's (PGI) action in paying the additional commission to its agent was a breach of the OCC guidelines. The prosecution contended that the breach of the OCC guidelines would amount to an offence under s. 41(2) of the Insurance Act 1996. In the preliminary gounds of judgment, the learned Sessions Court Judge states the real purpose of the OCC guidelines as "to instill better financial discipline in the insurance industries so that the insurance company can operate profitably while ensuring that they are able to meet claims for settlement for the policy owners". Nevertheless there was nothing in the judgment, that showed that the learned Sessions Court Judge had decided whether such breach (if any) of the OCC guidelines was an offence under s. 41(2) of the Insurance Act 1996.

[9] Throughout the prosecution's case and in the submission of the Deputy Public Prosecutor (DPP) they had relied heavily on the evidence that there was an additional commission paid through Omniteam Sdn Bhd (Omniteam) and M-Two Network (M-Two) by PGI in order to boost and to increase the sales of PGI and it was not disputed that those monies were incentives given to agents for the business brought in for the purpose of the insurance funds. On the other hand, counsel for the appellant in his submission had heavily challenged and maintained that the OCC guidelines was a mere guidelines and has no force in law. To this extent, it is the duty of this court to decide whether the OCC guidelines is just a mere administrative and consultative guidelines or whether such guidelines has some force of law. The difference between the two is important as it involved the legal implication and whether it is a criminal offence pursuant to s. 41(1) and s. 41(2) of the Insurance Act 1996. Having perused the appeal record and the exhibits that were tendered by the prosecution, this court found that there were four guidelines that were issued by the Bank Negara Malaysia, namely:

A (a) Revised JPI/GPI 2 – guidelines to control operating costs of general insurance business dated 25 October 1999 (P188);

(b) Revised JPI/GPI 2 – guidelines to control operating costs of general insurance business dated 8 August 2000 (P189);

B (c) Revised JPI/GPI 2 – guidelines to control operating costs of general insurance business dated 1 October 2002 (P190);

(d) Revised JPI/GPI 2 – guidelines to control operating costs of general insurance business dated 27 April 2006 (P191);

C In the earlier part of the guidelines, this court discovered that the "background" to the OCC guidelines, Bank Negara Malaysia merely expressed the desirability for general insurers to instill better financial discipline in controlling operating costs in accordance with the guidelines.

Background

D 1. Guidelines to control payment of commissions and agency-related expenses as well the overall management expenses of insurance companies are expected to instill better financial discipline within the insurance industry so that the insurance industry can be financially geared up to meet the vast insurance potential within
E Malaysia at a fair cost to the insuring public. With the imposition of these controls on spending, the insurers should be sufficiently disciplined to operate profitably while ensuring that a major portion of premiums paid by policy owners is returned to them by way of claims settlements and to provide fair pricing of the insurance
F products offered;

2. These guidelines were drawn up in consultation with Persatuan Insurance Am Malaysia (PIAM) and have been revised several times since their issuance in 1990. It is envisaged that through the compliance of these guidelines on commissions, the general
G insurance industry would be able to effectively compete amongst themselves based mainly on clientele servicing and product quality.

[10] Having perused and upon reading of the above exhibits, this court did not find anything mentioned in any of the guidelines that such non-compliance or breach of the same would amount to a breach of s. 41(2) of
H the Insurance Act or any of the other provisions in the Insurance Act 1996. By reference to (P191) at pp. 3124 to 3125 of the appeal record (vol. 10), para. 2 of the guidelines issued by its Deputy Gavernor, Datuk Zamani Abdul Ghani, despite the widespread industry practices of paying additional incentives in excess of the OCC guidelines, the Bank Negara's position (ie
I after the events at the material time which occurred between 2003 and 2006) had always been that the breach and/or non-compliance of the OCC

guidelines may attract the administrative consequences, in that it will be a factor to be considered by the Bank Negara in its assessment of the eligibility of board members and the Chief Executive Officers for re-appointment. The exh. (P191) at pp. 3124 to 3125 of the appeal record (vol. 10), para. 2 of the guidelines reads as follows:

> ... The Bank will conduct focused examinations on insurers from time to time and findings of involvements in such irregular schemes will be considered in the assessment of the eligibility of Board members and Chief Executive Officers of Insurers for re-appointment by the Bank. We would like to reiterate that the Senior Management team of Insurers cannot absolve themselves of any unhealthy schemes involving their company including by reason of ignorance ...

From the above guidelines and the wording spelt out, it is clear to this court, that the said circular issued by the Deputy Governor only stated that the non-compliance of the OCC guidelines will attract an administrative consequence, which is the eligibility of board members and the Chief Executive Officers for re-appointment. This is so since the re-appointment of the board members and the Chief Executive Officers as a general insurer require the approval of the Bank Negara Malaysia.

[11] In para. 2 of the guidelines (P191) which is now reproduced:

> 2. The Bank takes a very serious view of these unethical and unhealthy practices amongst insurers. Insurers are reminded to observe all the requirements of JPi/GPI 2, particularlty the limits of an agency remuneration. Insurers should not be rewarding their agents more than the maximum commission and agency related expenses limit allowed, including any payment in the form of introducer/referral fees and exclusivity fees. Such unhealthy schemes, including those funded by related companies of insurers, are not in line with the spirit of JPI/ GP1 2 and insurers must cease these schemes immediately ...

Regarding the above guidelines, even the Bank Negara themselves had labelled the payment of additional commissions as unethical and unhealthy, to this court, what is there now the prosecution is claiming it to be a criminal offence. To this extent, the submission propounded by the learned DPP at p. 9 of his written submission in submitting that the OCC guidelines were issued pursuant to Bank Negara Malaysia's power to issue guidelines relating to the conduct of the business and affairs of a licencee under s. 201 of the Insurance Act 1996 and any non-compliance of which would render a licensee liable to the general penalty under s. 203(1)(b) of the Act would nonetheless have no merit.

In support of his submission, the learned DPP had quoted the case of *Affin Bank Bhd v. Datuk Ahmad Zahid Hamidi* [2005] 1 CLJ 521 at p. 534, in which the High Court held that the Bank Negara Malaysia guidelines issued under s. 126 of the Banking and Financial Institutions Act 1989 (BAFIA) which is a provision similar to s. 201 of the Insurance Act 1996 has a force of law:

A Parts 3 Legal Provision

3.1 This guideline is issued pursuant to s. 126 of the BAFIA

Part 7 Other Issues

7.1 Where a Banking Institution grants a loan and the loan
B subsequently turns non-performing, the same financial institution or other institutions in the same group is not allowed to grant a new credit, by way of a loan or debt instrument, to the defaulting borrower is still deemed to be viable, he financial institution should reschedule or restructure the loan ...

C ... it cannot be doubted that the BNM guidelines were put in place in order to prevent any debt from spiraling out of control. It is a matter of policy and it is for the good of the country that all the banks in the country should adhere to the BNM guidelines since Bank Negara being the Central Bank is the regulatory body entrusted to put in place and implement the
D minimum standards for classification of accounts, income recognition and loan loss provisioning. The BNM guidelines are issued pursuant to Section 126 of the BAFIA and it has in force ...

Similarly, the learned DPP had also quoted the case of: *Diana Chee Vun Hsai v. Citi Bank Bhd* [2009] 6 CLJ 774 at p. 799, the High Court held that the
E credit card guidelines issued by BNM under s. 70 of the Payment Systems Act 2003 (PSA) which is a provision similar to s. 201 of the Insurance Act is a subsidiary legislation, having legislative effect and force of law:

Part B Legal Provisions

F 4. Legal Provisions

4.1 The guidelines are issued pursuant to Sections 25 and 70 of the Payment Syestems Act 2003. Any person who fails to comply with the Guidelines may be guilty of an offence punishable under Section 57 of the Payment Systems Act 2003

G (14) The Bank Negara Credit Card Guidelines BNM/RH/GL/1014-1, as stated earlier was issued under the enabling provision of section 70 of the Payment Systems Act 2003. I am of the opinion that the said guidelines are piece of subsidiary legislation. "Subsidiary legislation" is defined under section 3 of the Interpretation Acts 1948 and 1967 as;

H Any proclamation by law, rule, regulation, order, notification, by law or other instrument made under any Act, Enactment, Ordinance or other lawful authority and having legislative effect ...

(15) The Bank Negara Guidelines comes under the category of "other instrument" and is therefore a subsidiary legislation, having effect and
I force of law ...

[12] With respect to the above cases, this court found that in those cases, the guidelines issued were clear and specifically mentioned that it was issued pursuant to certain type of laws. The provisions of the relevant sections of the Act are clearly spelt out in the guidelines. To my mind, if Bank Negara had intended for any of the guidelines to attract penal consequences, the provisions of the relevant sections of the Act will be mentioned as shown in the case relied upon by the prosecution. Sadly, in the present appeal this court did not find any of these laws appearing in the guidelines.

[13] It is not disputed that the power under s. 201 of the Insurance Act 1996 empowers the Bank Negara Malaysia to issue guidelines on the conduct of the business and the affairs of licensed general insurers, including insurance company.

> Power to issue guidelines
>
> The Bank may issue guidelines, or notices in respect of this Act relating to the conduct of the business and affairs of a licensee.

On the other hand, under s. 202 of the Insurance Act 1996, the Minister or Bank Negara Malaysia, with the approval of the Minister, has conferred the power to make regulations, where non-compliance of the same had been made expressly in s. 203 of the Insurance Act 1996 to be an offence. Having read this provision, I found that though s. 203 of the Insurance Act 1996 makes specific references to other matters, the breach of which is an offence, nevertheless, Parliament had intentionally left out "guidelines". Would it be now the case, as the prosecution is saying, that it was a mere "error" or that it "accidentally omitted" the important word "guidelines" ?

> 203. General Penalty
>
> (1) A person who
>
> (a) contravenes or fails to comply with a provision of this Act; or
>
> (b) fails to comply with a requirement, notice, order or direction issued by the Minister or by the Bank under this Act, or a regulation made under this Act.
>
> Commits an offence and, where no penalty is expressly provided, is liable on conviction to a fine of five hunfred thousand ringgit or to imprisonment for a term of six months or to both ...

This court hardly finds anything in the Insurance Act 1996 to render the non-compliance of a Bank Negara Malaysia's guidelines, be it the OCC guidelines or otherwise, a criminal offence. In this circumstance, to my mind, the legislative intention of the Parliament in enacting the Insurance Act 1996 is very clear and must be given effect to, where there is an obvious and legal distinction between guidelines or "garis panduan" issued by the Bank Negara Malaysia and that of a regulation made by the Minister or with the approval of the Minister. Having considered this, it is my opinion that if Bank Negara Malaysia's were Guidelines really intended to have the force of law, it would

have been enacted as a regulation pursuant to s. 202 of the Insurance Act, with the approval of the Minister. Otherwise, it shall remain as mere guidelines or "garis panduan". In fact, after the enactment of Financial Services Act 2013, (FSA 2013), the guidelines were no longer in force and there were no similar provisions or guidelines being enacted to reflect the same pursuant to the Financial Services Act 2013. Nevertheless, this court hardly finds anything that was done by the prosecution. In deciding the above, this court would refer to the case of *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Berhad v. Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335, where the court held that:

> ... however, "guidelines" are only a statement of principles pointing the general direction ...

In another case of *MCIS Insurance Berhad v. Associated Cover Sdn Bhd* [2001] 1 LNS 322, the decision of the High Court is specifically in relation to the OCC guidelines. In this case, the court had held that the OCC guidelines have no force of law and as such, the breach of the same cannot amount to a breach of s. 41(2) of the Insurance Act 1996. In this case, the insurer tried to avoid paying its agent the agreed commission rate on the basis that it was above the rates as set out in the OCC guidelines. The arbitrator in that case had decided and held that the OCC guidelines had no force of law and that the insurer was entitled to be paid its commission pursuant to their agreement notwithstanding that it was above the rates limited by Bank Negara Malaysia in the OCC guidelines. This was upheld by the High Court in dismissing the insurer's attempt to set aside the arbitrator's award as can be seen in the following:

> ... in an "Interim Award" on liability the Arbitrator ruled that the Bank Negara Guidelines did not have the force of law and did not take away Associated Cover's Contracted rights to the commissions claim. As adverted to earlier this Court dismissed the application of MCIS to set aside the Interim Award No: 23.3.2001 and we are now only concerned with Quantum Award ...

Since the above case strictly relates to the OCC guidelines as in the present appeal, I am of the opinion that if the court was to accept the prosecution's case and expressed the view that such breach of the OCC guidelines amount to an offence under s. 41(2) of the Insurance Act, 1996, the *MCIS*'s case would be the best to sanction and order that such payment would amount to an offence, in which is otherwise.

[14] At the same time, this court would have the opportunity to look at exhs. D234 and D235 in vol. 12 of the appeal record as stated in the evidence of the Executive Director PIAM (SD6). Although the OCC guidelines were issued in consultation with PIAM, the Bank Negara Malaysia had never informed PIAM to notify its members that a breach of the OCC guidelines would be an offence under s. 41(2) of the Insurance Act. To this effect, this

court did not find anything on this issue that was considered by the learned Sessions Court Judge in her judgment. In the auditors' certificate of PGIB (KPMG) dated 27 March 2007 (D234) at p. 2 it quoted to this effect:

> In the normal course of the Audit we have not become aware of:
>
> (1) Any contravention of provisions of the Act, apart from the management expenses being in excess of the Operating Costs limits as stipulated in JPI/GPI 2 guidelines and other contraventions which do not have material effects on the financial statements;
>
> (2) Any offence of fraud, or dishonesty under any law having been committed by the insurer or its employee; or
>
> (3) Any irregularity which jeopardises the interest of policy owners or creditors of the company or any other serious irregularity ...

To this effect, this court ruled that the submission by the learned DPP that the auditor's report (D234) was inaccurate and cannot be relied upon cannot hold water and has no merit.

Second Issue

Whether The OCC Guidelines Are Vague, Ambiguous And Doubtful. If So, Whether Such Breach Of The OCC Guidelines (If Any) Tantamount To A Breach Of s. 41(2) Insurance Act 1996

[15] It is trite law, that when an Act of Parliament or legislation, be it primary or secondary, was relied upon by the prosecution to attach criminality on an individual, it must be interpreted and construed strictly. This is in accordance with the fundamental principles that only Parliament, and not judges, can create offences and any such criminal provisions must be clear and unambiguous so that offences are certain and definite. Otherwise, it will result in an individual suffering penal consequences unfairly and unjustly. In the case of *Mah Hong Ching & Anor v. PP* [2007] 2 CLJ 292; [2007] 1 MLJ 123, the said principles were affirmed by the Court of Appeal and Gopal Sri Ram JCA (as His Lordship then was) held as follows:

> (12) This brings me to the third point. It really follows from the second. And it is this. The Act is a piece of penal legislation and must therefore receive a strict construction. See, *Chow Kok Keong v. Public Prosecutor* (1998) 2 CLJ 469. Courts must be most careful to ensure that they do not insert words in the definition so as to enlarge the crime of trafficking. For, it is the task of Parliament and not the courts to create offences. Otherwise, the law will be uncertain and indefinite. See, *R v. Kelly* (1992) 92 DLR (4th) 643, applied in *Public Prosecutor v. Hairul din bin Zainal Abidin*. The approach I take is one that has been settled by High Authority. Thus in *Attorney General v. Silliem* (1864) 33 LJ Ex 92 at 110, Pollock CB said:
>
> > If I were asked whether there be any difference left between a criminal statute and any other statute not creating an offence, I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law ...

Having said the above, to my mind, whether s. 41(2) of the Insurance Act 1996 covers payments that are not in compliance with or in breach of the OCC guidelines or otherwise is still in doubt, vague and ambigious. This is especially so when the payments were made to an agent of the insurance company who had in fact brought in business and gross written premium, which contributed to the assets of the insurance fund. In other words, it is vague, ambigious and doubtful whether the breach of the OCC guidelines (if any) would tantamount to a breach of s. 41(2) of the Insurance Act 1996. As such, both the appellant and respondent cannot be held to be criminally responsible for a conduct, which they could not reasonably apprehend to be an offence. This is especially so when they are compelled by s. 41(1) of the Insurance Act 1996 to ensure that there are sufficient assets in the insurance funds to meet its liabilities or claims. From the reading of the OCC guidelines, this court managed to observe some vagueness and uncertainties. In exh. P188, the revised JPI/GPI 2 – Guidelines to control operating costs of general insurance business, first issued on 27 December 1990 and revised on 1 November 1999 as appeared at p. 3094 and p. 3095 of the appeal record, vol. 10 as follows:

> Coverage
>
> 3. All insurance companies underwriting general insurance business are advised to observe the limits on commission and management expenses, as contained in these guidelines ...

Having read the above, to my mind, the nature of the guidelines clearly mentioned that the general insurance companies are merely advised and not compelled or imposed mandatory requirement to observe the limits on commission in the OCC guidelines. Similarly in the Bank Negara Malaysia guidelines dated 25 October 1999 issued by Encik Zakaria Ismail, Pengarah, Jabatan Pengawalan Insurans, the Bank Negara Malaysia had considered any inefficiency on the part of a general insurer in controlling costs to be "unprofessional" and not "illegal" practices which are detrimental to the industry must be eliminated to pave way for healthy competition on the basis of product quality and clientele services.

[16] In view of such ambiguity and vagueness whether the OCC guidelines would tantamount to a breach of s. 41(2) of the Insurance Act 1996, it is my considered opinion that such ambiguity to be interpreted in favour of the appellant and the respondent. In the case of *PP v. Ini Abong & Ors* [2009] 1 CLJ 526, the court held that:

> ... I am afraid our jurisprudence and the Federal Constitution do not permit the court to read into penal Act meaning which may be prejudicial to the accused. More importantly, courts are required to interpret a criminal statute in favour of the accused and not in favour of the State ...

In the case of *Shukri Mohamad v. PP* [1995] 3 CLJ 799, the Supreme Court unequivocally held that:

> … It is a familiar canon of construction that where two views can reasonably be entertained regarding the meaning and effect of provisions in a highly penal statute, and, a *fortiori*, where what is at stake is human life - that in favour of the accused should be adopted. We are supported in this by the following passage in Maxwell on *Interpretation of Statutes*, 11th Edn., at page 254/255, which reads:
>
> > But the rule of strict construction requires that the language shall be so construed that no access shall be held to fall within it which do not fall both within the reasonable meaning of its term and within the spirit and scope of the Enactment …
> >
> > Where an Enactment may entail penal consequences, no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language …

Third Issue

If There Were Breaches Of The OCC Guidelines (If Any), Would The Appellant And/Or Respondent Be Punished According To The Statute Or Otherwise

[17] In my earlier part of this judgment, since it has been ruled that the guidelines have no legal effect, I had the opportunity to view and read the book as submitted by learned counsel for the appellant entitled *Administrative Law of Malaysia and Singapore*, 3rd edn. at p. 82 regarding the effect of the guidelines. In this book, the author Professor MP Jain commented that the guidelines have no legal effect and it is doubtful that the breach of the guidelines would attract the legal remedy. Nevertheless, according to the author, the administrative body (such as the Bank Negara Malaysia) has such discretion to impose the administrative consequences, for examples the suspension or cancellation of licence. At p. 288 of the bundle of authorities it read as follows:

> … for example, the guidelines issued under the Income Tax Law, as mentioned above, do not have any legal effect but they do have practical effect; courts may not enforce the same, but, in practice every one, ef assesse, tax lawyer, tax administrator, seeks to rely on them. However, if the department does not follow a guideline, it is doubtful if legal remedy may be available. But as stated above, the concerned administrative body may exercise its discretionary powers keeping in view the directions. For example, a licensing authority may exercise its power to issue, suspend or cancel a license in terms of the directions it may have issued to inform the concerned licenceholder …

[18] The proposition as to the effect for non-compliance of the guidelines, is also propounded in the Court of Appeal case of *Thong Foo Ching & Ors v. Shigenori Ono* [1998] 4 CLJ 674 at p. 694, Siti Norma Yaakob JCA (as Her Ladyship then was) held that:

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> ... I had, a year later, in the case of *Malaysia Overseas Investment Corporation Sdn. Bhd. v. Sri Segambut Supermarket Sdn. Bhd.* (1986) 2 MLJ 382, ruled the Guidelines to have "no force of law" but of advisory character only and non-compliance whatsoever will have no effect as to the legality or otherwise of the contract ...

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> ...
>
> A reading of the guidelines shows that there is no penalty imposed for non-compliance of any of their provisions. From the very nature of the documents itself, and its purpose to eradicate poverty by restructing the Malaysian society so as to correct any racial economic imbalance, at most I would say the guidelines impose a moral obligation only on those effected to comply with their provisions. In this respect I agree with Mr. Wong that non-compliance or avoidance of the guidelines cannot render any agreement to be invalid or unenforceable. At most, non-compliance can be used as a means of refusing to exercise a discretion, a purely administrative act, as was done by the directors in the *David Hey*'s case. On the facts of this appeal before us, I consider that the learned trial judge was correct when she held that avoidance of the guidelines in the manner that was done in this case cannot be held against the Respondent as to render the two agreements invalid ...

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[19] To equate with the above proposition, it is best once again to read the exh. P191 at pp. 3124 to 3125 of the appeal record vol. 10, para. 2 of the guidelines reads as follows:

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> ... The Bank will conduct focused examinations on insurers from time to time and findings of involvements in such irregular schemes will be considered in the assessment of the eligibility of Board members and Chief Executive Officers of Insurers for re-appointment by the Bank. We would like to reiterate that the Senior Management team of Insurers cannot absolve themselves of any unhealthy schemes involving their company including by reason of ignorance ...

F

The above guidelines issued by the Deputy Governor merely stated that the non-compliance of the OCC guidelines will attract administrative consequences, which is the eligibility of board members and the Chief Executive Officers for reappointment. Based on the above, I concluded that even if it is true that the appellant and the respondent had not complied (if any) of the OCC guidelines, the recourse opened to Bank Negara Malaysia was that it could have taken administrative actions such as the PGIB's licensed insurer be revoked or suspended and they will not be considered for their reappointment of the board members or the Chief Executive Officers of the insurance company, but not to prosecute it as a purported criminal offence. But to impose punishment as in the case of appellant for imprisonment of 12 months on all the 53 charges (sentence to run concurrently) would run foul of the provision of the laws. If ss. 41(1) and 41(2) of the Insurance Act 1996 do not warrant such punishment, it is possible to look at s. 203 of the Insurance Act 1996 concerning the general penalty. This provision only confined to the punishment imposed on the

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failure to comply with a requirement, notice, order or direction issued by the Minister of the bank or a regulation made under the Act. Nevertheless, nowhere stated in the section pertaining to any failure to follow such guidelines that imposed such penalty.

[20] Based on the above, to my mind, whether the prosecution has managed to prove a case beyond reasonable doubt against PGIB and for the deeming provision under s. 206 of the Insurance Act 1996 to apply against the appellant and the respondent remains a doubt and the learned Sessions Court Judge had failed to direct her mind in considering the facts of the case.

Fourth Issue

Whether The Appellant (Edwin Wong) And The Respondent (Bernard Wong) Had The Intention To Breach Any Of The Provisions Under The Insurance Act 1996

[21] In dealing with this issue, I have intended to deal with the situation that involved the appellant and the respondent separately. To begin with, it is best to look at reg. 41(1) of the Insurance Regulations 1996 regarding the absolute minimum solvency amount required and s. 41(1) of the Insurance Act 1996 in which it requires the licensed insurer to maintain its assets in its insurance fund whether it is equivalent or higher than the amount of liabilities of the insured fund.

> Regulation 41: Absolute Minimum Amount
>
> 41(1) A licensed insurer and a licensed foreign professional shall maintain at all times an absolute minimum amount of margin of solvency for each class of business as follow:

	On and After 1 January 2000 (Ringgit)	On and After 1 January 2001 (Ringgit)
A licensed insurer	40,000,000	50,000,000
A licensed foreign Professional Reinsurer	10,000,000	10,000,000

> Section 41(1) Insurance Act 1996
>
> A licensed insurer shall maintain at all times assets in its insurance fund which is of a value equivalent to or higher than the liabilities of that insurance funds

It is not disputed and agreed by the prosecution, that in the year 2001 despite the increase of its sales, PGI was nevertheless suffering from underwriting losses, net losses and decreasing solvency surplus in which PGI was not paying additional incentives to agents, such annual premium collected dropped from RM138 million to RM68 million in 2001 and later in 2002, the premium dropped further to RM58 million. Under the above regulation, the absolute minimum solvency required was RM50 million and with such

dropping trend, PGI would not be able to maintain the same and would be in breach of s. 41(1) of the Insurance Act 1996. In order to overcome that, the appellant as a Chief Executive Officer of PGI would need to implement measures and additional incentives were essential to ensure that PGI is competitive enough in the general insurance industries and to attract more sales into PGI in compliance with s. 41 of the Insurance Act 1996 and reg. 41 of the Insurance Regulation 1996. In the year 2003 onwards, the insurance premium collected for the insurance funds had increased in the forthcoming years.

[22] The next question that need to be asked is if the appellant had taken measures and additional incentives, whether the payments were properly attributed to the insurance fund? It is to be noted that at all material time, all the payments as stated in the charges were intended for and made to the agents of the insurance company who had in fact brought in business and gross written premium, which contributed to the assets on the insurance fund. This court did not find any of the payments that were made to another party outside the scope of agent to the company. The appellant (Edwin Wong) being the Chief Executive Officer of PGI has the role to maintain the necessary margin of insolvency of PGI, for which gross written premium was a key component. The appellant would be bound to comply with s. 41(1) of the Insurance Act 1996 and to make sure that the insurance fund of the company had that sufficient assets. To my mind the appellant had no choice but to engage with the agents to safeguard the insurance company from being insolvent and from breaching s. 41(1) of the Insurance Act 1996. In such a situation, the appellant's intention in paying additional incentives was nonetheless for the purpose of increasing the asset of the insurance company and to remain solvent. In the exh. P192, the PGI had given their respective declaration dated 31 May 2006 and signed by the appellant, respondent and other director that they had immediately ceased the operations of any scheme. In such a situation, to my mind the appellant and the respondent had truly took initiative and effort in making sure that the payment of additional incentives to the agent is to increase the sales and accordingly the assets of the insurance fund of PGI in order to meet s. 41(1) of the Insurance Act 1996. The fact that the payments were made to the agents as commission or incentives were affirmed by the prosecution witnesses itself. SP4, Lim Sau Pei, the former head of branches of the insurance company had testified and confirmed that the payments were in fact made to the agents of the company.

> Q: Look at the payment voucher costs for promotion marketing services to Omniteam for the amount for RM67,322-54. As mention earlier, this is the list of agents and to be paid the incentives, what is the amount?
>
> A: The amount stated in the invoice RM67,322.54
>
> Q: and the invoice from Omniteam

A: The invoice from Omniteam RM67,322.54

Q: What is the connection between all these?

A: These amount basically is the incentives that we need to pay the agent for the business that that brought they give use

Q: Referring to th all money, cheque given and bank to your account, you confirm that you received this. Can you tell what is the purpose of you receiving these amount whether by cheque or TT??

A: Yes, the purpose is to pay up to the agents for the business to Pan Global on top of the normal commission

The same evidence given by SP5, Lim Shu Hiang, the Finance Executive of the insurance company also confirmed that the payments she processed were meant for incentives to be paid to the agents:

Q: You mentioned you calculated the amount, what is the amount?

A: Percentage. Based on the percentage they will calculate the amount

Q: What is this amount for?

A: Incentives for Agent

[23] It is in the evidence of the prosecution witnesses from Bank Negara Malaysia that during the material time between the year of 2002 to 2006, the insurance company had been able to constantly maintained assets in excess of the required margin of solvency. From SP15 evidence it revealed that it had benefited the insurance fund in which the insurance company was at all times solvent and there was never an instance when the insurance company was not able to meet any of the claims from its policy holders. This witness had testified that PGI had never in any instances when there was any deficit in PGI's insurance funds.

Q: Was there instances when PGI was unable to meet its claims?

A: No.

Q: Can I put it to you that the deficit you were referring to was merely the difference between the management expenses and those which are allowable that was different?

A: Yes

Q: You were not referring to any deficit in the Insurance fund?

A: No

[24] Having considered this appeal, this court could hardly find any action which tantamount to any misuse of the funds for the benefit of the appellant whether directly or indirectly as he is merely fulfilling his obligation to ensure that PGI is solvent and to be able to meet future possible claims by the insurer. Without doubt that the appellant had made such a good effort in ensuring that the insurance fund of the company had sufficient assets, the

learned DPP had submitted that the incentives payment made was in breach of the OCC guidelines and it was made in "disguise" to suggest that the payment was not properly attributable to the insurance funds. There were falsely described in the submission for work done by Omniteam and M-Two Network. To this effect, this court did not find any disguise that was purportedly made up as alleged by the prosecution without any basis what so ever. In fact evidence was given that the term cost of promotion marketing expenses was the correct terminology used in accounting standards which includes any promotion done for the purpose to increase sales. Furthermore, the description given by Omniteam and M-Two Network in the invoices was a misdirection given by them and the appellant (Edwin Wong) herein only gave them instructions to prepare the invoices that reflect the payments to the agents using their standard template. The appellant in his cross-examination stated below:

Cross-Examination

Q: You agree that the fact you approve the invoices, even though the vitual and copy writing work was not done shows that the 53 payments of additional sales incentives to the agents are disguise as for payment for promotion, marketing and service, simple as that do you agree?

A: No fully, because I sign this based on the representation that I have asked SP LIM. If you asked me whether I sign for payments for sales incentives, yes I did and we classified it as promotion and marketing and when this invoice comes to me as I said, I signed the payment vouchers I just ask SP Lim, "Okay, just show me the agent listing and his much sales incentive that entitle to" and I signed it and I said "Okay, issue cheque and pay the agents". Then subsequently you know in the first year the invoices are not there as practice for the transaction. I don't look at the payment voucher together with the invoices and subsequently everytime when SP Lim comes and gives me the invoices, I tell him is it everything in order and he says yes, I signed off ...

Throughout the arguments and the written submission submitted by the learned DPP, I found that the DPP has not even produced any evidence that the appellant had tried to disguise any payment of the incentives. In fact the allegation made by the prosecution here is not in any way relevant to this appeal unless they had suggested that the misdescription is "improper" and as such is an offence under s. 41(2) of the Insurance Act 1996, which is not the case herein.

[25] To sum up the above and in considering the appellant's appeal, I need to stress and emphasise as follows:

(a) The learned DPP's assertion that a breach of the OCC guidelines is purportedly an offence under s. 41(2) of the Insurance Act is doubtful both in law and in fact;

(b) There was no breach of s. 41(2) of the Insurance Act as the payment of additional incentives to agents were undisputedly for the purpose of the insurance fund of the insurance company and as such, it had to be properly attributable to the insurance fund;

(c) The action of the appellant was in the best interest of the insurance company, its insurance fund and its policy holders. There was no intention to breach s. 41(2) of the Insurance Act 1996 to use its asset for any purpose that is not properly attributable to the insurance fund or business of PGI; and

(d) Notwithstanding the payment of the additional incentives to the agents of PGI, there was never an instance when PGI was insolvent or unable to meet the claims from its policy holders; and

(e) Even after taking into account the payment of the additional incentives to PGI's agent, it was sufficient for PGI to transfer from its insurance fund to its shareholder fund to make payments for the purpose of rewarding its directors and chairman.

[26] Having considered the appeallant's case, I shall now proceed on with the appeal by the learned DPP against an acquittal order of the respondent. In this care, the respondent as a chairman and the directors of Pan Global Insurance (PGI), faced 27 charges under s. 41(2) of the Insurance Act 1996 read together with s. 206 of the same. Nevertheless on 14 January 2012, at the end of the defence's case, the respondent was found not guilty of all 27 charges. The learned Sessions Court Judge then ordered the respondent by duly acquitted and discharged from all offences. Hence the DPP had appealed on this order. In the course of considering this appeal, it is best to view the grounds of judgment at pp. 17 till 44 of the appeal record, vol. 1.

> ... reasonable and capable of belief for all the reasons given in his defence ...
>
> ... the Court concluded and accepted the Defence of the First Accused ...
>
> ... upon these reasons and on the Balance of Probabilities, the Court concluded and accepted the Defence of the First Accused and he had successfully shifted the burden of proof required under Section 206 of Insurance Act 1996 ...

[27] Having considered the appellant's appeal on the status and the issue of legality of the OCC guidelines issued by the Bank Negara Malaysia, the same principles of laws applied and my decision would also apply to the respondent.

[28] In the first ground of appeal, the learned DPP submitted that the respondent had prior knowledge on the cash incentives payment to the agents by Pan Global Berhad. He contended that direct evidence from witnesses especially SP4 and SP6 who testified that PGIB's directors (which include

A the respondent) knew about the additional cash incentives payments to PGIB agents. The learned DPP also contended that SP3, SP4 and SP5 had testified that the respondent had signed the payment vouchers in which the agents listing was attached. Based on the facts, the respondent would have been "put on notice" but he did not do anything about it but instead connived to the
B payments of additional cash incentives to PGIB agents. In other words, what the DPP is saying is that, in order to consent or to connive to the commission of the offence, the learned DPP has to prove that the respondent must be aware of and possessed the knowledge of the existence of the scheme and armed with that knowledge the respondent consented or connived to its
C commission. In deciding the issue whether the respondent had prior knowledge on the cash incentives payment to the agents by Pan Global Berhad or otherwise, this court would view the witnesses' testimony as well as any documentary evidence. At the first instance, the cash incentives scheme was in effect from July 2003 till September 2005. Nevertheless none of the exhibits (P100 to P106) regarding the board meeting had clearly
D revealed of any discussion on any proposal of the scheme, let alone the approval of the scheme by the board. SP16, the investigation officer had confirmed this in his cross-examination at p. 325, para. 2, vol. 1 of the appeal record:

E Q: Di dalam minit-minit tersebut, langsung tidak ada tercatit bahawa Board of Directors telah memberi kebenaran kepada Management untuk menjalankan Skim Intensive kepada Agen-agen melalui Omniteam dan M-Two, betul tak?

A: Betul

F On this point also, PGI's Chief Operating Officer (SP6) in his examination in chief at p. 103, additional record of appeal testified that:

At the Board Meeting at 2003 when Edwin was discussing normal market practices, other insurers are paying additional incentives over and above the prescribed limit and PGI was under tremendous pressure to engage
G agents to a level playing field. There was no discussion of the *modus operandi* at the Board Meeting ...

... no formal decision was taken (by the Board) ...

Q: When did the Board came to know about it (the Scheme)?

H A: When BNM issued and ordered for PGI to produce document relating to Omniteam and the whole matter that asked to assist in complying the documents.

Q: When was this?

A: 2006 towards the end

I **[29]** Based on the testimonies of the witnesses, it has come to my mind that the cash incentives scheme (CIS) would only be aware by the board of director towards end of 2016 when the appellant (Edwin Wong) had briefed them stating that PGI was asked by the Bank Negara Malaysia to produce

documents relating to Omniteam and M-Two Network. In furtherance to this, I have read the report on order to produce books and documents under s. 107(b) (exh. P113) at p. 2257, record of appeal, vol. 7 together with documents board of director minutes of meeting No. 10/2006 on 7 December 2006, para 6.6 (exh. D114, p. 2266, record of appeal, vol. 7) stated as below:

> 6.6 Decision
>
> After length deliberation, the Board expressed utter shock over the fiasco and resolved that:
>
> i. The resignation of Edwin Wong Lee Tuck, Chief Executive Officer, and Lim Sou Pei, Head of Agency Distribution - Branches be accepted with immediate effect as per letters submitted to the Board;
>
> ii. Bernard Wong Shoon Tet, Chairman of the Board be appointed as Acting Chief Executive Officer, subject to the approval of BNM;
>
> iii. The Company Secretary be directed to submit a letter to notify BNM of the resignation of Edwin Wong Lee Tuck as Chief Executive Officer and decision of the Board to appoint Bernard Wong Shoon Tet as Acting Chief Executive Officer subject to BNM's approval and application being filed;
>
> iv. The Company Secretary be directed to set up a meeting as soon as possible by next week for the full board to meet with Director, Insurance Supervision Department on the resignation of the Chief Executive Officer and the current investigation;
>
> v. A special committee of the Board be set up comprising Kelvin Ong as Chairman, Foo Ton Hin and Tan Eke Luck, assisted by the Chief Internal Auditor to investigate thoroughly CEO's findings and to submit a report to the Board on completion of its investigation ...

In comparing the evidence of the witnesses and the above exhibits, this court concluded that the board of director as well as the respondent (Bernard) only came to know of the *modus operandi* of cash incentives scheme (CIS) on 7 December 2006 when the appellant had tabled it in the meeting. It is best to note that exh. P113 was tendered by the prosecution would clearly exonerates the board of director including the respondent (Bernard Wong) pertaining to the scheme. As such it is prosecution's own documentary evidence which precluded the respondent to have knowledge and ever consented to the scheme.

[30] In reading the content of exh. P113 regarding the resignation of the appellant (Edwin Wong) and SP4, Lim Sau Pei, this court has also refer to exh. D83, (SP4's statutory declaration dated 5 December 2006, para. 3 as at p. 1832 of the appeal record, vol. 6) which clearly reflect that SP4 crafted, masterminded and implemented the cash incentives scheme.

A

> ... I declare that between the period 2003 and 2005, I had been assigned to incentive agents to increase revenue through a specialist promotion and marketing services organisation, Omniteam Sdn. Bhd., M-Two Network where a pre-determined portion of the revenue generated from agents would be allocated for such purposes ...

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> ... I confirmed that it was wholly my decision, made during the normal course of performing my duty as an officer of the Company, that these incentives be paid to Agents (based on the revenue given to Pan Global Insurance Berhad) through the respective staff managing these Agents ...

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In line with the statutory declaration (D83), and the report of the chief internal auditor, exh. D82, which has been adopted by the prosecution branded (SP4) as the mastermind of the scheme, and rightly so. In his evidence in chief he conceded that he was an active participant of the scheme. He together with his secretary (SP3, Abby Chan) would "operate" the scheme. The report of the chief internal auditor explained the operation of the scheme as follows:

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> 1.4 *Modus Operandi* (scheme of arrangement)
>
> ... A designated person, ie. Ms Abby Chan Lai Fun (personal assistant to Mr. Lim Sou Pei former Head of Agency Distribution - Branches) until her resignation on 30 September 2005 coordinated the Scheme of arrangement. Her responsibilities in this respect included collation of production data from All sales units at Head Office and branches throughout the country, calculation of incentives due to each qualifying Agent, communication with Omniteam and M-Two Network Sdn Bhd to issue invoices, processing of payments, transmission of cheques and informing staff involved of incentives monies banked into their bank accounts. A flow diagram of the Scheme of arrangement setting out the *modus operandus* as appropriately supported with sample documentary evidence is set out in Table 3 below ...
>
> 1.6 Mastermind Based on documentation available for review, it is our considered view that Mr. Lim Sou Pei (former Head - Agency Distribution - Branches), was the person that crafted the arrangement to channel incentives purportedly to qualifying agents, whilst the implicated staff were under instruction of their superiors acting as a conduit to disburse the monies banked into their personal bank accounts to qualifying agents under their portfolios ...

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Having regarded the above, to my mind it is beyond doubt that (SP4) was an accomplice of the highest order. In fact he should be charged (if any and none others) but instead he turned as prosecution witness. To me, his action needs to be careful scrutinised in deciding both the appeal cases.

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[31] In considering further on whether the respondent knew of the scheme, it revealed that there were no documents whatsoever that relates to the cash incentives scheme attached to the payment vouchers that sent to the respondent. SP3 being the prosecution witness themselves having maintained the standard operating procedure (SOP) in her evidence, had confirmed that

the agent listings and the production summaries in support of the scheme were never attached to any payment vouchers sent to the respondent for signature. At p. 166, para. 4 of the appeal record, vol. 1, SP3 said:

> Q: When Bernard Wong signed all these documents from Tag 27 to Tag 45, the Agent listings were not attached?
>
> A: No
>
> Q: What was attached with the payment vouchers to the Finance Department for approval?
>
> A: There will be invoice, agent production listing together with the payment voucher, attached together to the CEO, Mr. Edwin Wong to sign and the attachment is actually not meant for Mr. Bernard Wong. The report is actually requested my boss to prepare and my boss told him, he was instructed by Mr. Edwin Wong that he wanted to view the report everytime he signed on the payment voucher ...

To this issue, the evidence of (SD3 – respondent secretary) and (SD4 - deputy president of finance) had also confirmed of the same effect.

> Q: When these documents come up for Mr. Bernard to sign, these documents are the name of Agents together with the list and summary and production also come up at the same time to Mr. Bernard Wong to sign?
>
> A: No, they won't come up together

[32] Having regards to the above and even the prosecution own witness (SP3) had testify and confirmed that the supporting documents were never attached to the vouchers, is it fair and wise to say now as the learned DPP had submitted that the respondent was "put on notice" about the additional cash incentives to PGIB agents and the respondent choose not to do so and "turned a blind eye". The learned DPP further submitted that since the payments for the additional cash incentives to agents were made by the agency distribution department instead of the art director's department which is a different department, the respondent cannot now say that he did not know about the additional payments. To this effect, I found out that it was just a mere presumption and without any basis at all. To my mind, without the agents listing and the production summaries in support of the cash incentives scheme being enclosed, the respondent would not have known that the payments sought for Omniteam and T-Two Network *via* the payment vouchers were meant for anything else but for "cost of promotion marketing services" for work actually done by them.

[33] In support of his defence, the respondent had tendered his sworn statement that was made to the Bank Negara Malaysia pursuant to s. 107 of the Insurance Act, exh. (D213). At pp. 3614 to 3615 of the appeal record, vol. 11, I found out that it was an exculpatory statement in which its content

clearly shows that the respondent (Bernard Wong) had never consented or connived to the scheme and he had shown diligence to prevent the commission of the offence. In this statement it states that:

> ... the first time I knew that these payments are actually cash incentives scheme payable to PGI's agents *via* Omniteam or M-Two Network somewhere in December 2006 when CEO, Edwin Wong brought up the matter to the Board because of the investigation on these matters by the Bank Negara Malaysia ...
>
> ... If the Board knew that additional commission or incentives was being paid to the Agents, the Board would definitely go ahead the payment of the additional incentives or commission ...

Having regard to this issue, the question that was put before me is whether the exh. D213 was to be considered as part of the defence for the respondent in sustaining his acquittal. In the case of *Ghasem Gharezadehsharbiani Hassan v. PP* [2014] 1 LNS 752; [2014] 5 MLJ 433, Azahar Mohamed JCA (as he then was) stated that:

> ... the contents of the cautioned statement represented the early disclosure of the defence of the appellant. The cautioned statement was given about three days after the appellant was arrested. Indeed, he had stated his version of events at a very early stage of the investigation against him. The contents of the cautioned statement were consistent with his oral evidence in court, hence the defence of the appellant was not something that was sprung for the first time in the defence case (see *Public Prosecutor v. Lin Lian Chen* (1992) 2 MLJ 561) ...
>
> ... the learned trial judge must consider carefully whether the cautioned statement is capable of raising a reasonable doubt on the prosecution case. The trial judge has a duty and obligation to fairly and justly weigh the defence version and evidence (including the cautioned statement of the appellant) to reach a just result. (see *Ahmad Mukamal bin Abdul Wahab & Ors. v. Public Prosecutor* (2014) 1 MLJ 865, (2013) 4 CLJ 949)

Having said in the above case and supported by some other cases, I am of the view that the respondent's statement (D213) under caution containing necessary particulars that support his innocence must carry weight. It represents respondent's first disclosure of his defence while under investigation. As such, I agree that D213 had created some doubt in the prosecution's case as conceded by the learned Sessions Court Judge in acquitting the respondent.

[34] Nevertheless, in another issue as submitted by the learned DPP, the respondent did not exercise diligence to prevent the commission of the offence. He even submitted to the extent that when you sign as an approving authority, you are vouching for the fact that service has been performed. In view of this, he submitted further that the evidence given by SD3, SD4 and SD5 should be rejected as they were considered as an interested witnesses. In considering this issue, again it is worth to look at the evidence of the

investigation officer (SP16). To my mind, he was an honest and frank witness as he stated categorically that the respondent had been diligent. In his cross-examination at p. 331 of the appeal record, vol. 1, he stated as follows:

> Q: I put it to you based on the inspection report conducted by the Bank Negara in the year 1998, among the others is that Board of Directors cannot interfere in the management, yang kedua based on fact that the CEO is the proper person which the Board can relief on them, number three based on the format of payment voucher, Bernard Wong is the final signatory and no complaint by Bank Negara on this process, do you agree that Mr. Bernard Wong cannot be said that he was not diligent?
>
> A: Setuju

To my mind, the very honest and frank concession of the witness SP16 on this point that the respondent was indeed diligent means the case for the prosecution had failed. This piece of evidence would definitely substantiated and fully endorsed the evidence given by SD3, SD4 and SD5. The learned DPP's submission in saying that these witnesses' testimonies should be rejected are nonetheless and baseless. Being the final signatory, the respondent was to sign off when he was satisfied that the due process had been carried out and provided that nothing unusual or suspicious arose that countermanded the process involved. To do this, he relied substantially on the various designated person stated above who in the course of performing their functions checked and signed off in accordance with the standard operating procedure, prior to him. It is best to note that the respondent was not an investigative role but an enabling role. As long as the process, which met with management approval was followed, he was but the final clearing checkpoint, having satisfied himself that the mechanism has been applied without compromise. By merely following the process, unless there is any evidence to the contrary as in this appeal there was none supported the prosecution's evidence. The respondent cannot be said to have consented to or connived in the commission of the offence or that diligence has not been applied. To sustain and fortify my judgment, I am fully reminded the case of *Tan Kiam Peng v. PP* (2008) 1 SLR 1, at p. 47, the Singapore Court of Appeal quoted Devlin J (as he then was) in *Roper*:

> In *Roper* ([104] *Supra*), although the court arrived at its decision on a comparatively narrow ground to the effect that the court below had taken into account inadmissible evidence and that the defendant's appeal had therefore to be allowed, Devlin J (as he then was) nevertheless proceeded to make the very pertinent observations, which merit quotation in full, as follows (at 288-289):
>
> > There are, I think, three degrees of knowledge which it may be relevant to consider in case of this kind,. The first is actual knowledge, which the justice may find because they infer it from the nature of the act done, for no man can prove the state of another man' mind; and they may find it even if the defendant

A gives evidence to the contrary. they may say: "We do not believe him; we think that that was his state of mind." They may feel that the evidence falls short of that, and if they do they have then to consider what might be described as knowledge of the second degree; whether the Defendant was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions B have been used to describe that state of mind. I do not think it necessary to look further, certainly not in cases of this type, than the phrase which Lord Hewart, CJ used in a case under this section, *Evans v. Dell* (1937) 53 The Times LR 310), where he said (at page 313): ... **the Respondent deliberately refrained from inquiries the results of which he might not care to have**.

C The third kind of knowledge is what is generally known in the law as **constructive knowledge: it is what is encompassed by the words "ought to have known" in the phrase "knew or ought to have known". It does not mean actual knowledge at all; it means that the defendant had in effect the means of knowledge.** When, therefore, the case of the D prosecution is that the Defendant fails to make what they think were reasonable inquiries is, I think, incumbent on them to make it plain which of the two things they are saying. This is a vast distinction between a state of mind which consists of deliberately refraining from making enquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and E prudent person would make. If that distinction is kept well in mind I think that justices will have less difficulty than this case appears to show they have had in determining what is the true position. The case of shutting one's eye is actual knowledge in the eyes of the law; **the case of merely neglecting to make inquiries is not knowledge at all - it comes within the legal conception of constructive knowledge, a conception which** F **generally speaking, has no place in the criminal law** ...

(emphasis added)

The above observations - quoted at length because, as we shall see below, of their signal importance - are instructive. Although the G learned judge spoke of "three degrees of knowledge", there are, in point of fact, only two distinct categories, *viz*, actual knowledge and constructive knowledge, respectively. The former, however, comprise two sub-categories - first, actual knowledge in (for want of a better way of putting it) an actual sense and secondly, actual knowledge in the form of wilful blindness. And, as Devlin J aptly H put it, the other main category of knowledge, *viz* constructive knowledge "has no place in criminal law". However, as we shall see below (especially at [133]), the line between actual and constructive knowledge is not, owing to the very factual nature of the inquiry, always that clear.

I ……..

More importantly, perhaps, *Roper* was also endorsed in the Singapore high Court decision of *Koo Pui Fong*, where Yong Pung How CJ observed thus (at page 272, [23]):

> There is a vast difference between a state of mind which consists of deliberately shutting the eyes to the obvious, the result of which a person does not care to have, and a state of mind which is merely neglecting to make inquiries as a reasonable and prudent man would make. The latter also known as constructive knowledge, is not knowledge at all ...

[35] At the outset, and in considering the learned DPP's appeal against the respondent, I would conclude the following:

(a) I need to stress again that the learned DPP assertion that a breach of the OCC guidelines is purportedly an offence under s. 41(2) of the Insurance Act is doubtful both in law and in fact;

(b) When the respondent approved the 27 payment vouchers which formed the subject matter of the charges he did not know that the payments were actually meant for cash incentives for qualified agents;

(c) For the period 2002 to 2006 there was actual promotional and advertising work done by both Omniteam and M-Two Network. This was in fact corroborated by the internal audit report (that exh. D82) which was admitted at the request of the prosecution;

(d) That the 27 vouchers had the necessary prior approvals. This was an important aspect. It cannot be denied that the respondent was the last signatory of all the 27 vouchers. They carried the approvals of the various persons in charge;

(e) That the agents listings and the summaries of their production were not sent to the respondent. The respondent was very clear in his evidence that the agents listings and their production summaries were never sent to him. As such the respondent never knew that in fact these payments were actually meant for cash incentives. In SP3's evidence which was repeated again in SD3 and SD4 testimonies had confirmed on these issues and they had vetted through the cheques and the payment vouchers before the respondent signed them;

(f) The respondent and the board of director only knew of the existence of the scheme on 7 December 2006 when the board was briefed by the appellant (Edwin Wong) where he tabled his report on the investigation into the scheme and Omniteam and M-Two Network. This was corroborated by exhs. (D114 - minutes of board meeting held on 2006) and (P113 – report on order to produce book and documents under s. 107(2)(b) of the Insurance Act);

(g) The respondent had given statement under s. 107 of the Insurance Act 1996 (D213) when the matter was investigated. It was an exculpatory statement. The contents of the statement clearly showed that the respondent never consented or connived to the scheme and had shown

A diligence in its prevention of the commission of the offence. The statement represents the *bona fide* of his defence. The contents of the statements were consistent with his evidence in court;

(h) The respondent has exercised diligence in the prevention of the offence. He had explained at length of the standard operating procedure (SOP) B that has been put in place by PGI. It is this – the payment vouchers were prepared or requisitioned by the person in charge. The requests were signed by him or her. That requisition has to be approved by the head of department, in this instant appeal, by SP4. After that, the appellant (Edwin Wong) has to approve it before it goes to the respondent for final C approval and signature. It was best to note that this SOP was never criticised by the auditors (both internal and external), by the head of finance (SP6), by the Bank Negara Malaysia, which on a regular basis audited the books of PGI; and

(i) As submitted by the learned DPP that by reason of concept of D constructive knowledge it can be imputed that the respondent knew that the payment in the payment vouchers to both Omniteam and M-Two were for cash incentives were non relevance and cannot be relied on.

[36] In the case of *PP v. Mohamed Noor Jantan* [1979] 1 LNS 77; [1979] 1 MLRA 375; [1979] 2 MLJ 289: E

> It is well settled ... the burden is placed on an accused person to prove anything ... the burden is only a slight one and this burden can be discharged by the evidence of a witnesses for the prosecution as well as witnesses for the defence.

F **[37]** Similarly in the case of *PP v. Saimin & Ors* [1971] 1 LNS 115; [1971] 1 MLRH 91, [1971] 2 MLJ 16-17, this court held that:

> ... a conviction cannot be sustained even if the court is satisfied that the prosecution story "may be" true unless and until it is found that the prosecution story "must be true" ... the falsity of the defence does not G relieve the prosecution from proving the prosecution case beyond reasonable doubt ...

[38] In considering the fact in this appeal, this court is fully reminded himself of the principles in law in the case of *Krishnan Ramar v. PP* [1987] 1 CLJ 28; [1987] CLJ (Rep) 145; [1987] 1 MLJ 292 at 295-296:

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> ... it is one of the most basic rule of justice that however heineous a crime person is accused of, whatever the rank of the person who testifies against him, he can only be convicted on evidence produced according to the stringent requirement of law ... but it does not mean that a person accused of the most serious crimes to equal protection before the law ... is that I his guilt must be proved in accordance with or in a manner required by law. Anything less will be not enough ...

[39] Lastly this court had also referred to the case of *Choo Chang Teik & Anor v. PP* [1991] 3 CLJ 2387; [1991] 1 CLJ (Rep) 54; [1991] 1 MLRA 280, [1991] 3 MLJ 423:

> ... although it is unfortunate that a guilty party cannot be brought to justice, it is more important that there should not be a miscarriage of justice and the law should be maintained that the prosecution should prove its case ...

[40] In the upshort of the case, I find there are reasons and valid grounds in coming to my final decision of this appeal. By virtue of the above reasons I had no hesitation to allow the appellant's (Edwin Wong) appeal and to dismiss the learned DPP's appeal against the respondent (Bernard Wong). As such I reversed the order of the learned Sessions Court Judge and hence the appellant (Edwin Wong) be acquitted and discharged on all charges against him. This court also affirmed in the learned Sessions Court Judge's decision in acquitting and discharging the respondent on all charges against him. The appellant's appeal be allowed and the DPP's appeal be dismissed.

This court feels that the order is wiseable, fair and suitable having regards to the applicable principles of laws and reasons forthwith. This court expresses it appreciation to the learned DPP and learned counsel for their assistance in early disposal of the case.